LIEW TECK FOOK

v.

CHAN YIP POOI & ORS

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[PETITION NO: D5-26-10-2000]
27 NOVEMBER 2004

COMPANY LAW: *Members' rights - Oppression - Petition for order of purchase of petitioner's shares by respondents - Whether company a quasi-partnership - Whether petitioner proved "oppression" or "disregard" - Appropriate remedy - Companies Act 1965, s. 181*

This was the petitioner's petition, pursuant to s. 181 of the Companies Act 1965 ('the Act'), seeking an order to direct the respondents to purchase all the shares of the petitioner at a value to be set down by an independent accountant/auditor within 30 days from the date of the valuation report being lodged into court. The 1st respondent was the registered owner of a piece of land ('the said land') and together with the other respondents, had entered into a joint venture agreement ('the JV agreement') with the petitioner to develop the said land. They set up a development company with the petitioner given the power to manage the company. The petitioner contended that, based on the various agreements between the parties, the company was, for all intents and purposes, a quasi-partnership between the said parties that took the form of an incorporated private company for the sole purpose of developing the said land. The petitioner's complaint of oppression or disregard of his interest in the company was based on the acts of the respondents over a period of approximately one year, beginning with the 2nd respondent's attempt to sell all his 60% shares in the company to one SQM Corporation Sdn Bhd ('SQM') until the removal of the petitioner as a director of the company.

Held (allowing the petition):

[1] It was clear, from the contents of the JV agreement, that the company was a quasi-partnership. The petitioner and the 1st respondent (the land owner whose only interest in the development was monetary when the land was developed) were the directors, and the 2nd respondent, who held 60% of the equity of the company, was a mere shareholder. The petitioner was also almost entirely responsible for the progress of the development of the land and up to the stage of the 2nd respondent's attempt to sell his shares in the company to SQM, when the project was at a fairly

advanced stage of implementation. Therefore, the plaintiff had the legitimate expectation that was shared, known and accepted by the respondents that he be allowed the right, freedom and latitude to continue to manage the company until the land was fully developed, in order to achieve the objective set out in the JV agreement by the parties. (pp 46 e-h & 47 a-d)

[2] In instances where a company is in the nature of a quasi-partnership and a petitioner can make out a case that he had been oppressed, it would be perfectly legitimate for the court to apply equitable considerations to grant relief under s. 181(2) of the Act, notwithstanding the fact that the respondents had acted according to the articles of association. Thus, the respondents' averment that they had acted in accordance with the articles of association in electing two new directors to the board and removing the petitioner from the board was untenable, if indeed there had been oppression or disregard on their part. (p 46 a-b)

[3] The respondents' appointment of the two new directors and the subsequent removal of the petitioner had the effect of completely removing the petitioner from the management of the company. Such acts constituted oppression or a disregard of the petitioner's interest in the company under s. 181 of the Act. There was no merit in the respondents' counter allegation, relating to matters connected with the management of the company, against the petitioner to justify the removal of the petitioner as a director. The petitioner's answers to those counter allegations were reasonable and acceptable, and it must be noted that up to the time the 2nd respondent attempted to sell his shares to SQM, no formal complaints regarding the petitioner's management of the company were ever brought up on a formal basis at any such meeting. (p 47 f-h)

[4] The appropriate remedy was to order the 1st and 2nd respondents to purchase the 40% equity of the petitioner proportionate to their shareholding in the company, since the respondents had removed the petitioner from the board of the company and taken it upon themselves to manage the company. The value of the shares was to be taken as at the day the petitioner was removed as director to be valued by a competent accountant in a proceeding before a registrar. (p 49 a-c)

[Ordered accordingly.]

Case(s) referred to:
Beh Chun Chuan v. Paloh Medical Centre Sdn Bhd & Ors [1999] 7 CLJ 1 ***(refd)***
Ebrahimi v. Westbourne Galleries Ltd & Ors [1973] AC 360 ***(refd)***
Jaya Medical Consultants Sdn Bhd v. Island & Peninsula Bhd & Ors [1994] 1 MLJ 520 ***(foll)***
Re Kong Thai Sawmill [1978] 2 MLJ 227 ***(foll)***

Legislation referred to:
Companies Act 1965, s. 181(1), (2)

Other source(s) referred to:
Loh Siew Chiang, *Corporate Powers Accountability*, 2nd edn, p 488, 6.12

For the petitioner - M Pathmanathan (J Amudha & Ravindran); M/s Murali B Pillai & Assoc
For the 1st, 2nd & 3rd respondents - Wong Seng Chow (K Mathimugam); M/s Wong Seng Chow & Co
For the 5th respondent - John Skelchy; M/s Gunaseelan & Assoc

Reported by Suresh Nathan

JUDGMENT

Kang Hwee Gee J:

The Petition
Pursuant to s. 181 of the Companies Act 1965 as follows:

(a) an order restraining the second respondent and/or their servants, agents or nominees from proceeding with the sale of the shares to SQM Corporation or its servants, agents or nominees or any other third party until the disposal of this action;

(b) an order restraining Victana and/or its board of directors and/or its shareholders and/or their servants, agents or nominees from approving the sale of the shares belonging to the second respondent to SQM Corporation or its servants, agents or nominees or any other third party until disposal of this action;

(c) an order directing that:

(a) the respondents to purchase all the shares of the petitioner at a value to be set down by an independent accountant/auditor within thirty (30) days from the date of the valuation report being lodged into court by the independent accountant/auditor; or

(b) Victana be wound up and be subject to the normal course of events resulting from such winding up;

(d) an order that the respondents are liable to the petitioner for all damages and loss of profits suffered by the petitioner as a result of the winding up of Victana and such damages to be assessed;

(e) an order that the first respondent is liable to the petitioner for all damages and loss of profits suffered by the petitioner resulting from the breach of the terms of the joint venture agreement by the first respondent and such damages to be assessed;

(f) an order that all the respondents are liable for all damages and loss of profits suffered by the petitioner resulting from the breach of the verbal understanding and partnership agreement entered into between the parties and such damages to be assessed;

(g) an order that parties be at liberty to apply;

(h) costs of this action; and

(i) any other or further remedies, relief and/or directions that this Honourable Court may deem just and fit.

In this proceeding however the petitioner is only seeking the order to direct the respondents to purchase all the shares of the petitioner as in Prayer (c) of the petition. The petitioner is also not proceeding against the 4th respondent Dato' Liew Sip Hon.

The Facts

1. The 1st respondent was the registered owner of a piece of land described as Lot No. 1921, EMR 2616, 7¼ mile, Sungei Rebau Ulu, Mukim Klang ("the said land").

2. The 3rd respondent is the son of the 2nd respondent and the 3rd respondent is also the son-in-law of the 4th respondent named herein.

3. The petitioner is an architect by profession and has extensive experience and expertise in development projects.

4. At the material time, the said land was charged to Citibank Bhd ("the bank") and as a result of the 1st respondent being unable to service the installment payments the 1st respondent entered into a deal with the 3rd respondent whereby the 3rd respondent agreed to refinance and develop the land.

5. The petitioner was invited by the 3rd respondent to develop the said land. It was orally agreed between the 3rd respondent and the petitioner that:

(i) Since the said land was procured through the contacts and efforts of the 3rd respondent and the said land was to be developed solely by the petitioner, the profits of the development project was to be shared equally between them.

(ii) A development company will be set up and the shareholders of the company would be 1st respondent and the petitioner.

(iii) The 1st respondent and the petitioner will execute a joint venture agreement.

(iv) The 1st respondent will be given some units of buildings developed on the said land in consideration of him transferring the said land to the company.

6. As a result of the above:

(i) A joint venture agreement dated 4 February 1994 (the said "JV Agreement") was executed between the 1st respondent and the petitioner (LTF-10 in encl. 2) and

(ii) The 5th respondent, Victana Sdn Bhd ("Victana") was incorporated on 18 June 1994 as a private company limited by shares, with the petitioner and the 1st respondent holding one (1) share each and

(iii) The 1st respondent executed a Power of Attorney dated 3 August 1995 in favour of the petitioner to add things necessary to, *inter alia* obtain the necessary approvals and licenses to commence the project: LTF-100

(iv) The 1st respondent executed a Power of Attorney dated 3 August 1995 in favour of the Victana. The said Power of Attorney was for all intents and purposes given to the petitioner as it was agreed that the petitioner would be solely responsible for the development of the said land and for the management of the Victana.

7. In order to safeguard the interests of all the parties concerned and to source out the necessary funding, the following arrangements were subsequently orally agreed and acted upon by the parties:

(i) As the 3rd respondent could not be a director of Victana in view of his employment in Citibank Bhd, the 2nd respondent, who is the 3rd respondent's father, was included as a shareholder of Victana as the 3rd respondent's nominee.

(ii) That the assistance of the 3rd respondent's father-in-law be sought to arrange for financing and that the said land was to be seen to be sold to Victana for a certain value so that the same can be charged to the bank providing the financing.

(iii) The 3rd respondent's sister, Betty Yong Pik Ching ("Betty") be employed in Victana to be in charge of managing the accounts and administrative matters of Victana (LTF-21 of encl. 2).

(iv) The petitioner and the 1st respondent were the directors of Victana, and were entitled to draw a monthly fee from Victana. The 3rd respondent was paid a monthly allowance, referred to as consultancy fees, through a company called Accounts Star Sdn Bhd in which the 3rd respondent had interests (LTF 20 in encl. 2).

(v) The petitioner and the 1st respondent would be the directors of Victana from 18 June 1994.

(vi) The petitioner would be appointed as the architect of the project, through his firm Aki Seni Cipta (LTF 17 in encl. 2).

8. To facilitate the financing of the project, the 1st respondent and Victana entered into a sale and purchase agreement on 18 August 1994 ("the sale and purchase agreement") and the said land be transferred to Victana for a consideration of RM4 million (LTF 13 in encl. 2). The consideration of RM4 million, which was higher than the market value, was agreed upon to for the following reasons:

(i) The financing needed by Victana to develop the said project was RM2 million and to obtain such financing, it was necessary for Victana to own a property worth at least double the said amount to be charged as collateral;

(ii) The said amount of RM4 million was never to exchange hands as the first respondent was still to be paid a sum of RM2 million by transferring four shop lots from the said project once the said project was completed.

9. With the above, OCBC Bank Berhad, granted Victana an overdraft facility of RM2 million and the said Land was, accordingly, charged to the said bank as security.

The Law

Section 181(1) and (2) of the Malaysian Companies Act 1965, provides as follows:

> (1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Court for an order under this section on the ground:
>
> (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
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> (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).
>
> (2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the Order may:
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> (a) direct or prohibit any act or cancel or vary any transaction or resolution;
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> (b) regulate the conduct of the affairs of the company in future;
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> (c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
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> (d) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or
>
> (e) provide that the company be wound up.

In order to succeed in this petition, the petitioner must identify and prove "oppression" or "disregard". See *Re Kong Thai Sawmill* [1978] 2 MLJ 227. Per Lord Wilberforce at p. 228:

> This section can trace its descent from s. 210 of the United Kingdom Companies Act, 1948 which was introduced in that year in order to strengthen the position of minority shareholders in limited companies. It also resembles the rather wider s. 186 of the Australian Companies Act, 1951. But s. 181 is in important respects different from both its predecessors and is notably wider

in scope than the United Kingdom section. In sub-section (1)(a) it adds disregard of the interests of members, etc. to oppression as a ground for relief in this respect making explicit what was already inherent in the section (see *In re HR Harmer Ltd.* [1959] 1 WLR 62, 75). It introduces a new ground in sub-section (1)(b) and, most importantly, in sub-section (2), which sets out the kinds of relief which may be granted, it provides for "remedying the matters complained of" and states as a specific type of relief that of winding-up of the company.

Section 210 is differently constructed. Under it, the court is required to find that the facts would justify the making of a winding-up order under the "just and equitable" provision in the Act, but also that to wind-up the company would unfairly prejudice the "oppressed" minority.

The Malaysian section, on the other hand, requires (under sub-section 1(a)) a finding of "oppression" or "disregard", and then leaves to the court a wide discretion as to the relief which it may grant, including among the options that of winding the company up. That option ranks equally with the others, so that it is incorrect to say that the primary remedy is winding-up. That may have been so before 1948 and even after the enactment of s. 210, but is not the case under s. 181.

Their Lordships consider it important that courts applying s. 181 should do so according to its terms and its purpose and should not regard themselves as necessarily bound by United Kingdom decisions, which are based upon a different section, and in some cases restrictive. The same applies, though with less force, to reliance upon Australian decisions upon s. 186.

There are three particular points of direct relevance in the present appeal. First, it is claimed by the appellants that the section is not a substitute for a minority shareholders' action and, specifically, that many if not most of the matters complained of would properly form the subject of such an action.

Their Lordships agree with this in part. Relief cannot be sought under s. 181 merely because facts are established which would found a minority shareholders' action: the section requires (relevantly) "oppression" or "disregard" to be shown, and these are not necessary elements in the action referred to. But if a case of "oppression" or "disregard" is made out, the section applies and it is no answer to say that relief might also have been obtained in a minority shareholders' action. To the extent that the appellants so contend their Lordships do not accept their argument.

Secondly, for the case to be brought within s. 181(1)(a) at all, the complaint must identify and prove "oppression" or "disregard". The mere fact that one or more of those managing the company possess a majority of the voting power and, in reliance upon that power, make policy or executive decisions, with which the complainant does not agree, is not enough. Those who take interests in companies limited by shares have to accept majority rule. It is only when

majority rule passes over into rule oppressive of the minority, or in disregard of their interests, that the section can be invoked. As was said in a decision upon the United Kingdom section there must be a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect before a case of oppression can be made (*Elder v. Elder & Watson Ltd.* [1952] SC 49): their Lordships would place the emphasis on "visible". And similarly "disregard" involves something more than a failure to take account of the minority's interest: there must be awareness of that interest and an evident decision to override it or brush it aside or to set at naught the proper company procedure (per Lord Clyde in *Thompson v. Drysdale* [1925] SC 311, 315). Neither "oppression" nor "disregard" need be shown by a use of the majority's voting power to vote down the minority: either may be demonstrated by a course of conduct which in some identifiable respect, or at an identifiable point in time, can be held to have crossed the line.

Thirdly, in a number of United Kingdom decisions it has been held that for s. 210 to apply the complainant must show oppression continuing up to the date of proceedings (eg, *In re Jermyn Street Turkish Baths Ltd.* [1971] 1 WLR 1042); where there has been oppression in the past, the section does not bite. Their Lordships agree that the wording of the section (and the same is true of s. 181(1)(a)) relates to a present state of affairs: "are being conducted", powers "are being exercised" are grammatically clear: the language may be contrasted with that of s. 181(1)(b) which refers to an act of the company which has been done or threatened. But this argument must not be taken too far. What is attacked by sub-section (1)(a) is not particular acts but the manner in which the affairs of the company are being conducted or the powers of the directors exercised. And these may be held to be "oppressive" or "in disregard" even though a particular objectionable act may have been remedied. A last minute correction by the majority may well leave open a finding that, as shown by its conduct over a period, a firm tendency or propensity still exists at the time of the proceedings to oppress the minority or to disregard its interests so calling for a remedy under the section. This point is well brought out in *Re Bright Pine Mills Pty. Ltd.* [1969] VR 1002, 1011-2.

Their Lordships have made these observations upon the Malaysian s. 181, not because they disagree with the statement of the law by the Federal Court – which indeed recognised the wider scope of s. 181 as compared with the corresponding provisions in England and in Australia. They are concerned rather to emphasise the utility of the jurisdiction conferred upon the courts in Malaysia, and to deal with particular arguments urged in this case with some of which they do not agree. It is now necessary to relate them to the facts as proved.

The Petitioner's Complaints

The petitioner contends that based on the JV Agreement, the oral agreement between the parties and by the conduct of the parties Victana was, for all intents and purposes, a quasi-partnership between the said parties and which took the form of an incorporated private company for the sole purposes of developing the said project. The petitioner seeks to justify the existence of such a quasi partnership in this case by the following circumstances:

(1) the shareholders were a small close-knit group;

(2) the formation and continuation of Victana is based on the personal relationship of the parties involving mutual confidence;

(3) there was an agreement or understanding that some of the parties would participate in the management of Victana and particularly, in the context of the petitioner, to be in charge and control of the management of Victana;

(4) the restriction of the transfer of shares would be the exception rather than the rule, so that if confidence is lost or a member is removed from management, he cannot take out his share and go elsewhere;

(5) the parties, particularly the petitioner, have invested time and money in Victana and in its business and

(6) the petitioner was actively involved in the day-to-day operations and was financially and personally committed to Victana.

Consequently, the petitioner contends that he had the legitimate expectation that:

(i) He would be the sole person responsible and for developing the project and in consideration of the same, would receive forty percent (40%) of the profits derived from the sale of the buildings developed under the project.

(ii) That the parties concerned would remain in the partnership and would be the shareholders of Victana until the completion of the said project and the profits therefrom are derived.

(iii) That he would be in control of, or, at the very least, participate in the management and administration of Victana.

The petitioner's complaint of oppression or disregard of his interest in the company, is based on the following acts of the respondents over a period of slightly over a year, beginning with the attempt of the 2nd respondent to sell all his 60% shares in Victana (5th respondent) to SQM Corporation on or about 15 October 1999 until the removal of the petitioner on 4 March 2000 as follows:

Sale of the 2nd Respondent's Shares to SQM

1. In breach of the Articles, the 2nd Respondent, on or about 15/10/1999, agreed to sell his shares (which comprised almost 60% of the shareholding in Victana) to SQM Corporation Sdn Bhd ("SQM") and the Petitioner was never given any prior notice of this fact: SYF-5 (Encl 11) and LTF-2 and LTF-3 (Encl 2).

2. Article 34 embodies the quasi-partnership nature of Victana in that the members of Victana are given a right of pre-emption to any intended sale of shares by any member.

3. The Petitioner, then in control of the management of Victana, in no uncertain terms, registered his, and Victana's, protest against the sale and required the 2nd Respondent to comply with Article 34: LTF-5 (Encl 2).

4. In view of the Petitioner's objection and the fact that the sale was conditional on the 2nd Respondent acquiring the Board's approval (which, at that time, was made up of the Petitioner and the 1st Respondent), there began a continuous chain of events, highlighted below, as part of a conspiracy between the 1st, 2nd, 3rd Respondents and the owners of SQM, that was designed to stifle the Petitioner's protest against the sale and to ultimately remove the Petitioner from the Board and from management and control of Victana and for them to wrest control of Victana.

5. The chain of events occurred over a short period of time, i.e. between October 1999 and March 2000.

6. Although Victana was incorporated on 18/6/1994, the events described below only occurred after (1) the Project was reaching fruition, (2) the profits were close to being realized and (3) the intended sale of the 2nd Respondent's shares to SQM was objected to by the Petitioner.

7. The Respondents' immediate reaction to the Petitioner's protests was to requisition for an EGM for the sole purpose of appointing one Mr. Soo Quai Meng and one Mr. Thian Oon Kian as directors of Victana and was intended to outvote the Petitioner when the Board is called upon to sanction the 2nd Respondent's sale of shares to SQM and also to pave the way for SQM to control the Board: LTF-6 in Encl 2.

8. It is the Petitioner's argument that the intended sale of the shares by the 2nd Respondent to SQM was the catalyst of the Respondents' need or tendency or propensity to oppress or to disregard the Petitioner's interest and accordingly forms the basis of the conspiracy between the Respondents in doing all the other acts complained of by the Petitioner, so that when viewed as part of a consecutive story, constitutes continuous and persistent oppression of the Petitioner, the effects of which are permanently felt and persist at the date of the presentation of the petition and that, even by aborting the sale, there is no prospect of remedying this continuous course of oppression on the Petitioner – see *Owen Sim* (infra), at pg. 130.

Appointment Of Soo Quai Meng And Thian Oon Kian As Directors Of Victana, The Purported Suspension Of The Petitioner As Director, The Requisitioning Of An EGM To Remove The Petitioner As A Director And The Subsequent Removal Of The Petitioner As A Director On 4 March 2000

1. In compliance with the provisions of the articles, an EGM was scheduled on 7 January 2000.

2. The parties are in dispute as to the events that transpired at this EGM and accordingly, there are two sets of minutes produced. They are exhibited as exhs. LTF 34 and LTF 35 in encl. 2 respectively.

3. The petitioner contends that the purported appointment of Mr. Soo Quai Meng ("SGM") and Mr. Thian Oon Kian ("TOK") as directors of Victana is illegal and *ultra vires* the Articles as the purported appointment was after the Petitioner, in his capacity as Chairman of the EGM, had aborted the EGM and suggested that the 1st respondent and the 2nd respondent requisition for a new EGM – p. 30 of SYF4 (encl. 11).

4. The oppressive actions of the respondents against the petitioner proceeded at an extraordinary pace thereafter.

17 January 2000	The 1st respondent, SQM and TOK (purportedly acting as directors) wrote to the company secretary requesting for a Board Meeting to, *inter alia*, appoint SQM as compulsory additional signatory to the cheques: LTF 36 (2).
8 January 2000	Ms Betty Yong lodged her 1st police report against the petitioner: SYF8 (encl. 11).
11 January 2000	The 1st respondent, SQM and TOK (purportedly acting as directors) wrote to Bumiputera Commerce Bank Berhad: LTF37 (encl. 2).

a	12 January 2000	The 1st respondent, SQM and TOK (purportedly acting as directors) wrote to the petitioner: LTF29 (encl. 2). The said letter: · Made unfounded allegations against the petitioner. · Purportedly suspended the petitioner as director and denied him access to Victana's premises. · Terminated the petitioner as the architect of the project. This letter was received by the petitioner on 17 January 2000 and he responded thereto with a letter dated 19 January 2000: LTF50 (encl. 2).
d	13 January 2000	Police report made by the 1st respondent purportedly to prevent any disruption of a Board meeting scheduled for 14 January 2000: SYF11 (encl. 11).
e	14 January 2000	The petitioner filed Civil Suit No: D8-22-64-2000 against the 1st respondent, the 2nd respondent, SQM and TOK: SYF1 (encl. 11) and obtained an *ex parte* injunctions from Justice Dato' Abdul Hamid on 17 January 2000: LTF39 (encl. 2).
f	14 January 2000	The 1st respondent made a police report against the petitioner alleging that the Board meeting on 14 January 2000 was aborted due to the disturbances caused by the petitioner: SYF11 (encl. 11).
g	28 January 2000	Requisition for an EGM by the 1st and 2nd respondents to *inter alia*, remove the petitioner as a director of Victana and to appoint new directors (including the 2nd respondent): LTF7 (encl. 2).
h	11 February 2000	The 1st and 2nd respondents filed Suit No: D5-22-235-2000 against the petitioner and 6 others, including Victana: SYF16 (encl. 11).

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26 February 2000	The petitioner caused encl. 2 to be filed.
4 March 2000	An EGM was convened and the petitioner was absent. The petitioner was removed as a director and 5 new persons (including the 2nd respondent) was appointed as directors: SYF17 (encl. 11).

The 1st, 2nd and 3rd respondents opposed the petition on the following grounds:

1. It is open to petitioner to seek the remedies within the JV Agreement under cl. 8.01 which provided the petitioner with the right (as the Project Manager) to terminate the JV Agreement rather than to seek relief under s. 181 of the Companies Act 1965.

2. The terms of the JV Agreement were never incorporated into the Articles of Association of Victana and therefore (by the authority Beh Chun Chuan) it is not open to the petitioner to bring an action for oppression under s. 181.

3. The reliance by the petitioner on the attempted sale of Victana shares to SQM, the appointment of Soo Quai Meng and Thian Onn Kian as directors and the removal of the petitioner as grounds of oppression is baseless for the following reasons:

   a. The 2nd respondent's intention to sell his shares in Victana to SQM was never carried out and was therefore a non issue.

   b. The appointment of Soo Quai Meng and Thian Onn Kian as directors was undertaken in accordance with the Articles of Association by a valid resolution of the Board of Directors and with the mandate of all shareholders except the petitioner on 7 January 2000.

   c. Likewise, the removal of the petitioner was also made pursuant to EGM on 4 March 2000.

4. The respondents had acted lawfully under article 79 (g) and (h) of the company's Articles of Association which provide as follows:

   Subject as otherwise provided and the terms of any subsisting agreement, the office of a director shall be vacated if he:

   (g) without the consent of the company in a general meeting holds any other office of profit under the company except that of managing director or manager; or

(h) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in the manner requires by the Act.

5. The 1st and 2nd respondents can justify their requisition of an EGM by reason of the fact that the petitioner had breached and abused his position as a director when he failed to disclose to the company his interest in Aki Seni Cipta, the architects firm appointed for the project and had also failed to disclose that he was also a director of McGees Property Consultant and Management Sdn Bhd.

6. The respondents had acted lawfully within the purview of Article 51 which provides that:

> The Directors may, whenever they think fit, convene an extraordinary meeting, and the directors shall, on the requisition of members in accordance with s. 144 of the Act forthwith proceed to convene an extraordinary meeting.

7. The respondents seek to justify their actions in assuming control of the company instead on the acts and conduct of the petitioner in managing the company which they alleged were by themselves oppressive. For ease of reference and comprehension a summary of the specific complaints against the petitioner are set out in the left column of the table below with the petitioner's reply on the right:

a) Abuse of Power by the Petitioner	**a) Alleged abuse of Power**
1. Assuming the role of Managing Director in the 5th respondent without the approval or sanction of the Board Directors (BOD).	1. The petitioner refers to exh. LTF48 of encl. 2 (at p. 253 of the E. 2) which is a letter written on the 5th respondent's letterhead and signed by the petitioner wherein he stated that he had been managing director of the 5th respondent for 3 years with the full knowledge and agreement of the respondents and no complaints were made by them in those 3 years.

2. Assuming the role of sole proprietor of Aki Seni Cipta and Director of Mcgees Property Consultant & Management Sdn Bhd and simultaneously used services of these companies whilst being the project manager of the 5th respondent.	2. This cannot constitute an abuse of power as the respondents had full knowledge of these circumstances. This is clear from paras 48 and 50 of encl. 16 (The Petitioner's First Affidavit In Reply) and exh. LTF68 (p. 50 of encl. 16). Other documents that prove that respondents can be imputed with knowledge of these circumstances are as follows: – Exhibit LTF17, 18 and 28 of the Petition (encl. 2) – Exhibit LTF95 and 96 of encl. 39 – Exhibit LTF108 and 109 of encl. 61 – Exhibit LTF112 of encl. 62.
3. Withheld vital information regarding the status of the company to the detriment of the 1st respondent who is the director cum landowner who has every right to access of such information.	3. None of the respondents' affidavits contain this allegation which in itself is vague. The respondents do not state what this 'vital information' is. In any event, the available evidence does not support such an allegation.
4. Prevented the 1st respondent from actively participating in the running of the company despite he being the director of the 5th respondent.	4. This allegation is completely unwarranted. It is in fact the 1st respondent who failed to participate in the running of the company as is stated in paras. 56 to 58 of encl. 2 and exhs. LTF41(a) to (f) and LTF42, 43, 43(b) and 44 (at pp. 233-249 of E. 2).
5. Illegally appointing additional directors and a Company Secretary (Jay & Co.) on 13.12.99 without the knowledge and approval of the BOD as well as the 1st and 2nd Respondents and without the presence of the existing Company Secretary (MSA).	5. The additional directors were appointed validly *vide* the Board of Directors resolution dated 13 December 1999 (exh. SYF3 of encl. 11 [The Respondents' First Affidavit In Reply] at p. 21 of E. 11). Furthermore, the issue of whether the directors were properly

	appointed is pending before the High Court in Kuala Lumpur High Court Suit No. D5-22-235-2000 (exh. LTF61 to encl. 16 at p. 1 of the exhibits). Furthermore, the petitioner was authorized to chair the meeting held on 13 December 1999 by virtue of art. 93 of the 5th respondent's Articles of Association as is stated in the minutes of the meeting (exh. SYF3). The new company secretary (Jay & Co) was appointed on 17 December 1999 (and not 13 December 1999) after the previous company secretary (MSA) tendered their letter of resignation dated 13 December 1999. Reference is made to exh. SYF4 of encl. 11 at p. 31. Additionally, the board of directors meeting wherein it was resolved to appoint the 5 new directors was properly called. It was held at the company secretary's premises and the secretary herself (Chan Sow Fun) was present. The 1st respondent himself attended for part of the meeting. As the resolution to appoint the 5 new directors was taken at a board of directors meeting, no circular resolution was necessary.
6. Prepared and signed minutes of meeting held on 13.12.99 and assumed role of chairman which was not sanctioned by the BOD.	6. Paragraph a) 5 above refers.
7. Prepared and signed minutes of meeting held on 7.12.2000 without the knowledge and consent of the 1st and 2nd respondents as well as the existing Company Secretary (MSA).	7. No meeting was held on 7.12.2000. No reference was made by either the petitioner or the respondents to such a meeting in their affidavits. This is either a typographical error or the respondents are seeking to raise new allegations not contained in their affidavits.

b) Conflict of Interests	**b) Alleged Conflict of Interest**
1. Failure to disclose Petitioner's interest in Aki Seni Cipta and Mcgees Property Consultant & Management Sdn Bhd.	1. Paragraph a) 2 above refers. The respondents at all times knew of the petitioner's interest in: **Aki Seni Cipta** (a) The petitioner was asked to join the project because he was an architect. This is admitted by the respondents at para. 64 of encl. 11. (b) The 1st respondent approved the plans prepared by Aki Seni Cipta. – Exhibit LTF106 of E.61 – Exhibit LTF112 of E.62. (c) Payment of Directors fees to 1st respondent was through Aki Seni Cipta. – Exhibit LTF109 of E.61. (d) The 1st respondent and the 3rd respondent were present at a meeting held with Aki Seni Cipta and the piling contractor. – Exhibit LTF68 of E.16. **McGees Property Consultant** (a) The 1st respondent executed cheques in favour of McGees. – Exhibit LTF19 of E.2.
2. Issuing out letter of appointment to Aki Seni Cipta and McGees Property Consultant & Management Sdn Bhd purportedly signed by himself and without the knowledge and approval of the BOD.	2. Paragraph b) above refers

3. Awarding tender to Wasal Construction Sdn Bhd on the highest award without going through the proper process (Contracts Pro Consulting).	3(i) The respondents participated in the tender discussion prior to the appointment of Wasal and had full knowledge of their appointment. – Exhibit LTF19 of E.2 refers. 3(ii) In any event the petitioner was granted full authority to make the decision pursuant to the joint venture agreement dated 4 February 1994 and the Power of Attorney dated 4 February 1994 (exh. LTF100 of encl. 38). 3(iii) The Lembaga Jurukur Bahan Malaysia confirmed that Contracts Pro (M) Sdn Bhd was not registered as a firm of Quantity Surveyors (LTF102 of encl. 39). Contracts Pro therefore cannot be considered part of a "proper process". Nor can their reports be considered expert reports.
4. Awarding tender to Wasal Construction Sdn Bhd without knowledge and approval of BOD of the 5th respondent.	4. Paragraph b) above refers.
5. Approving progress claim from Wasal Construction Sdn Bhd without knowledge and approval of the 5th respondent and without the Certificate of an independent Quantity Surveyor.	5. Paragraph b) 3 above refers. Also, under the P.A.M. Form of Contract which was used in this project, all Interim and Final Valuation Certificates are to be assessed and certified by the Architect and not by an 'independent' Quantity Surveyor (sic).

6. Grant a loan of RM360,000 to Sendang Utama Sdn Bhd without the knowledge and approval of the BOD of the 5th respondent.	6. Respondents had knowledge of this: see para. 76 of encl. 16. (i) Payments were made by way of cheque and all cheques were signed by the 1st respondent – exh. SYF28 of encl. 11. (ii) A sum of RM345,000 has been paid back by Sendang Utama and was acknowledged received by Betty Yong – exh. SYF28 of encl. 11. (iii) The 1st respondent signed the 5th respondent's accounts which confirms that he had notice of it. Exhibit LTF103 of encl. 41 refers.
7. Grant a loan of RM80,000 to Makmur Sdn Bhd without the knowledge and approval of the BOD of the 5th respondent.	7. Respondents had knowledge of this: see para. 76 of encl. 16. Paragraph b) 6 above refers. (i) Payments were made by way of cheque and all cheques were signed by the 1st respondent – exh. SYF28 of encl. 11. (ii) The 1st respondent signed the 5th respondent's accounts which confirms that he had notice of it.
8. Concealing interest with the piling contractor ie, the M-Pile Contractor whilst being a director of the 5th respondent without the knowledge and approval of the respondent.	8. The petitioner does not have an interest in M-Pile. Furthermore, the respondents have not provided proof of these allegations.
9. In furtherance of the above, opened a joint account with Goh Kim Cheng of M-Pile Contractor without the knowledge and sanction of the 5th respondent.	9. Paragraph b) 8 above refers. Further, the petitioner explained the circumstances under which he opened a joint account with Goh Cheng which, in brief, was:

	9.1 After the contract was awarded, M-Pile wanted advance payment as the company did not have sufficient funds. The petitioner advance the money to M-Pile (exh. LTF88 of E.28). 9.2 Therefore, M-Pile was merely repaying the sums advanced. See also paras. 18 to 19 of encl. 28 (exh. LTF88) and paras. 3 to 4 of encl. 29 (exhs. LTF91 to 92).
10. Making a claim for RM136,000.00 from the 5th respondent purported to be payment for services *vide* Aki Seni Cipta which was not approved or sanctioned by the BOD of the 5th respondent.	10. The affidavits filed by the respondents do not make reference to this alleged claim. The respondents are estopped from raising new allegations not contained within the affidavits. Furthermore, this allegation is not relevant. According to the respondents the alleged claim was not approved by the board of directors. As such no actual payment was made.
c) Misconduct of Petitioner	**c) Alleged Misconduct of Petitioner**
1. Verbally abused and threatened the company secretary Chan Sow Fun until she tendered her letter of intention to resign on 13/12/99. But this was not accepted in the EGM on 7/1/2000 by the 1st and 2nd Respondents.	1. The affidavits filed by the respondents do not state that Chan Sow Fun was verbally abused or threatened. The respondents are estopped from raising new allegations not contained within the affidavits. Furthermore, the resignations of company secretaries, Ms Chan Sow Fun and Cik Norazian binti Abdul Malek were accepted as effective on 7.1.2000. This was resolved by way of a board of directors circular resolution dated 11.1.2000 (exh. SYF4 of encl. 11 at p. 26).

2. Proceeded to conduct an illegal meeting without the presence of the 1st and 2nd respondents' company secretary on 13/12/99.	2. Paragraph a) 5 above refers. Petitioner further states that exh. SYF3 of encl. 11 clearly shows that the board of directors meeting was held at the Company Secretary's premises and that she was present. It also shows that the 1st respondent was present during part of the meeting. It is also to be noted that the 2nd respondent was not a director and therefore was not involved in board meetings.
3. Appointed another company Secretary, Jay & Company (which is illegal) without the knowledge and approval of the BOD.	3. The appointment was pursuant to the Board of Directors Resolution dated 16.12.1999 – see para 33 of encl. 16 and exh. LTF64 of E.16.
4. Colluded with Jay & Company to tamper with the company register without the knowledge of the existing Company Secretary.	4. The affidavits filed by the respondents do not make reference to this allegation. The respondents are estopped from raising new allegations not contained within the affidavits. In any event: – There was no tampering. – No particulars of the alleged 'tampering' are provided by the respondents.
5. Terminated the services of Ms Betty Yong Pik Ching, Administration cum Account Clerk and locked her out of the office premises and withheld her personal belongings.	5. The reasons for the termination of Betty Yong's services were for her unsatisfactory performance as set out in the minutes of the directors meeting held on 13.12. 1999 (exh. SYF3 of encl. 11 at p. 21). The petitioner filed a police report on Betty Yong's misconduct subsequent to her dismissal (exh. LTF52 of E. 2 at p. 263) in removing company documents. The petitioner provided further details of Betty Yong's conduct at paras. 6 to 14 of encl. 23.

6. Lodged police reports falsely accusing Ms Betty Yong Pik Ching of being in possession of company's documents when it was otherwise.	6. The petitioner denies lodging false reports. Para c) 5 above refers. See also LTF86 of encl. 23 wherein Betty Yong acknowledged that the 5th respondent's cheque book was in her briefcase.
7. Forced 1st respondent to pre-sign cheques with no particulars given.	7. The 1st respondent stated that he pre-signed the cheques willingly. Para 70 of encl. 11 refers. Therefore the petitioner did not force him into signing the cheques. In fact, the respondent refused to sign cheques if favours were not given to him and his family. Reference is made to para. 56(b) of encl. 2 and exh. LTF41b thereto.
8. Withheld information that Wasal Construction Sdn Bhd actually indebted to the 5th respondent in the sum of RM930,000 for the sale of 2 units of terrace factory lots as contra payment to the amount due from Wasal Construction Sdn Bhd. The Petitioner failed to collect progressive payments from Wasal Construction Sdn Bhd although 65% work was completed. As a result of that a notice under s. 218 Companies Act l965 has been issued against 5th respondent by Wasal Construction Sdn Bhd.	8. The affidavits filed by the respondents do not contain this allegation. The respondents are estopped from raising new allegations not contained within the affidavits. Furthermore, the respondents have failed to disclose that the winding-up petition filed by Wasal was struck off.
9. Withdrawal of RM342,575.00 from the Company account in Bank Bumiputra Malaysia Berhad A/C No.: 0980600038 signed by the Petitioner and Goh Wai Yee (unauthorized signatory) without the knowledge of the 1st respondent who is the compulsory signatory.	9. The petitioner replied this allegation in para 28 and 78 of encl. 16. In brief: (i) the payments made were that due and owing from the 5th respondent to third parties. (ii) Apart from Aki Seni Cipta and McGees, RM200,000 was paid to Wasal (main contractor), RM50,000 paid

	to M-Pile (piling contractor) and RM75 was paid to Jay & Co (company secretary). (iii) Goh Wai Yee was validly appointed a director by way of the Board of Directors resolution dated 13.12.1999 (exh. SYF3 to encl. 11). (iv) Goh Wai Yee was appointed a signatory to the 5th respondent's bank accounts by way of a directors circular resolution dated 21.12.1999 (exh. SYF48 of encl. 33 at p. 29 of the affidavit).
10. Payment of RM80,000 to Aki Seni Cipta where the petitioner is the sole proprietor. The cheque was signed by the petitioner and Goh Wai Yee, the unauthorized signatory.	10. The RM80,000 referred to was payment due for architect's fees. Paragraph 26(b) of encl. 36 refers. Goh Wai Yee as director was an authorized pursuant to a directors circular resolution dated 21.12.1999 (exh. SYF48 of encl. 33 at p. 29 of the affidavit).
11. RM10,000 paid to McGees Consultant & Management Sdn Bhd where the petitioner is the director and shareholder. The petitioner and Goh Wai Yee, the unauthorized signatory, signed the cheque.	11. The RM10,000 referred to is the petitioner's salary for a 2 month period. Paragraph 26(c) of encl. 36 refers. Paragraph 32 of the petition (encl. 2) explains that the petitioner's salary was paid to McGees Property Consultant and Management Sdn Bhd.
12. Goh Wai Yee was never made a signatory to the cheques issued by the 5th respondent and thus made him an unauthorized signatory.	12. Goh Wai Yee was made a signatory pursuant to a directors circular resolution dated 21.12. 1999 (exh. SYF48 of encl. 33 at p. 29 of the affidavit).
13. Issued a company resolution not sanctioned or approved by the BOD of the 5th respondent and cheated the 5th respondent of RM342,575.	13. The affidavits filed by the respondents do not make this specific allegation. What resolution are the respondents

	referring to? The respondents are estopped from raising new allegations not contained within the affidavits. Nevertheless, all the necessary resolutions were issued by the board of directors.
16. Sharing interest with M-Pile Contractor by having a joint account with M-Pile Contractor unknown to the 1st, 2nd & 5th respondents.	16. Paragraph b) 8 above refers. Further, the petitioner explained the circumstances under which he opened a joint account with Goh Kim Cheng which, in brief, was: 16.1 after the contract was awarded, M-Pile wanted advance payment as the company did not have sufficient funds. The petitioner advance the money to M-Pile (exh. 88 of E. 28) 16.2 therefore, M-Pile was merely repaying the sums advanced.
17. Misused his position as a director of the 5th respondent and gained advantage.	17. This allegation is a generalisation. The available evidence does not support such an allegation. The petitioner further states that it was through his efforts and financing that the project was 65% complete in September 1999. The bridging loan from OCBC was repaid by 20.04.1999 (exh. LTF29 in encl. 2) and the company recorded a profit of RM2,724,378 for the financial year ending June 1999 (exh. LTF87). So long as the petitioner remained the Managing director of the 5th respondent, the company was a profitable concern. Also none of these allegations were raised by the respondents prior to the filing of this petition and the petitioner being removed.

Findings

1. *Beh Chun Chuan*'s case was clearly not decided on the *Ebrahimi* or the quasi-partnership principle but strictly on the strict binding effect of the pre-incorporation shareholders agreement wherein the shareholders had agreed *inter alia* that the constitution of the board shall comprise representatives nominated by the parties and the power to nominate the directors; the parties were to amend the articles to comply with the terms of the shareholders' agreement; the shareholders' agreement was for a period of five years unless further extended by mutual agreement. The parties did not renew the shareholders' agreement and allowed it to lapse after five years.

   The petitioner in that case had relied on the shareholders' agreement to establish the existence of a quasi-partnership in the mould of *Ebrahimi* to seek a ruling under s. 181 of the Companies Act 1965 that the removal of the petitioner and his nominee as directors under the enabling provision of the Articles of Association was oppressive and or in disregard of the interest of the petitioner. But the court did not find that such a quasi-partnership existed at the time of the removal that may override the power to remove the petitioner and his nominee under the Articles.

   The case is not an authority for saying that mutual pre-incorporation understandings between the parties such as in a shareholders' agreement may not form the basis of "oppression" or "disregard" in a petition under s. 181 in all cases and that acts of the directors or shareholders made pursuant to the Articles may not be subjected to equitable intervention by the court.

   (See Loh Siew Chiang's *Corporate Powers Accountability*, 2nd edn. comment on *Beh Chun Chuan* at 488 footnote 155: "The part of the judgment of Kang J on the point that the articles reigned supreme over the shareholders' agreement for the purpose of equitable restrain is to be read in context.")

2. In essence the *Ebrahimi* type of companies, the Articles of Association are not exhaustive of the relations between the parties, or are cases in which the Articles of Association do not fully reflect the understandings upon which the shareholders are associated. In such cases the court will subject the exercise of legal rights to equitable considerations so as to uphold consideration of a personal character between the parties. (*Corporate Powers Accountability*: Loh Siew Chiang, 2nd edn. at 6.12.)

3. Where therefore the company is in the nature of a quasi-partnership and the petitioner can make out a case that he had been oppressed, it would be perfectly legitimate for the court to apply equitable considerations to grant relief under s. 181(2), notwithstanding the fact that the respondents had acted by the Articles of Association.

The respondents' averment that they had acted in accordance with the Articles of Association in electing the two new directors to the board and the subsequent removal is therefore untenable – if indeed there had been oppression or disregard on their part.

See *Jaya Medical Consultants Sdn Bhd v. Island & Peninsula Bhd & Ors* [1994] 1 MLJ 520. Per Siti Norma Yaakob J at 536:

> … concept of unfair discrimination or prejudice that enables the court to take into consideration not only the rights of the members under the company's constitution but also their legitimate expectations arising from agreements and understanding of the members among themselves.

See also *George Ting Yew Thong & Ors v. Leong Hup Holdings Bhd* unreported judgment of the Court of Appeal dated 23 November 1995 – legitimate expectation if proved can be accepted as a legitimate complaint under s. 181.

4. That the company is a quasi-partnership is clear from the contents of the JV Agreement that the parties had entered into:

a. A company was to be incorporated within one month of the signing of the JV Agreement (cl. 4.01);

b. that the parties had set out right from the start to develop the land into factories/shops/offices (cl. 1.07);

c. that the responsibility of developing the land into terrace factories/ shops/offices rests almost entirely on the shoulders of the petitioner (cls. 6.01 and 6.02);

d. that for this purpose he was appointed the Project Manager (cl. 3.02);

e. a power of attorney with wide powers to do all things necessary was given to him by the land owner, the 1st respondent in order to facilitate his duties towards achieving the objective of the development (cl. 5.07).

The fact that the company so formed, Victana was a quasi-partnership is also not disputed by the respondents (see submission).

5. I accept the submission of counsel for the petitioner that the basic terms and conditions in the JV Agreement and such understanding as orally agreed to between the parties were reflected in the structure of the company Victana: where only the petitioner and the 1st respondent (the land owner whose only interest in the development was monetary when the land was developed) were made the directors and where the 2nd respondent who held 60% of the equity of the company, was a mere shareholder.

6. I also accept the submission that the petitioner was almost entirely responsible for the progress of the development of the land and up to the stage when the 2nd respondent attempted to sell his shares in the company to SQM, when the project was at a fairly advanced stage of implementation. This is also not disputed by the respondents.

7. I must therefore also accept as tenable the submission that the petitioner had the legitimate expectation which was shared, known and accepted by the respondents that he be allowed the right, freedom and latitude to continue to manage the company until the land was fully developed to achieve the objective set out in the JV Agreement by the parties.

   By appointing the two new directors Soo Quai Meng and Thian Oon Kian to the Board of the company and later removing the petitioner from the Board, has the effect of removing him completely from the management of the company and therefore denying him his legitimate expectation to continue to manage the company until the objective of developing the land is achieved.

8. Unless the respondents can justify on valid grounds the appointment of two directors and the subsequent removal of the petitioner their acts constitute oppression or a disregard of his interest in the company under s. 181 of the Act. I am unable to find any merit in the respondents' counter allegation against the petitioner referred to earlier in this judgment to justify the removal of the petitioner as a director. I accept the answers of the petitioner to those counter allegations as reasonable and acceptable. Essentially, they relate to matters connected with the management of the company, which could properly have been raised in meetings of the board or for that matter at a general meeting. It is to be noted that up to the time the 2nd respondent attempted to sell his shares to SQM no formal complaints with respect to the petitioner's management of the company was ever brought up on a formal basis at any such meetings.

9. With respect to the appointment of the directors to the Board by the petitioner I find as follows: Article 74 provides only 2 directors for the company that is to say the petitioner and the 1st respondent. But Article 75 allows the Board (that is to say the petitioner and the 1st respondent) to appoint additional directors. The minutes of the Board meeting of 13 December 1999 indicates that there was the requisite quorum of two, but that the 1st respondent had left the meeting when the decision to appoint the directors was made. That decision to appoint the additional directors by the petitioner (and all other made by him at the meeting) must be accepted as legitimate as the 1st respondent had not voted against it having made himself unavailable at the meeting. Further, the decision was not inconsistent with the understanding, particularly under Article VI of the JV reached between the parties that the petitioner was to be given a free hand to run the company.

Had the 1st respondent been available to object to the appointment, there would have been a stalemate or to use the generally accepted term in the industry, a deadlock, in which case the matter would have to be decided at a general meeting. The subsequent requisition for an EGM by the respondents and their decision to invalidate the appointments and other matters decided at the Board meeting was therefore legitimate in so far as due compliance with the exercise of their right under the Articles of Association of the company is concerned. But in doing so the respondents had exposed themselves to the intervention of equity under the Ebrahimi principle of having acted oppressively or in disregard of the interest of the petitioner – in which case a petition under s. 181 would still lie.

The Order

Under s. 181(2) of the Companies Act 1965:

> If on such application the Court is of the opinion that either of such grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the Order may:
>
> (a) direct or prohibit any act or cancel or vary any transaction or resolution;
>
> (b) regulate the conduct of the affairs of the company in future;
>
> (c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
>
> (d) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or
>
> (e) provide that the company be wound up.

Having considered the submissions of the parties on this point, the appropriate remedy in my view is to order that the 1st and 2nd respondents purchase the 40% equity of the petitioner proportionate to their shareholding in the company.

The remedy is appropriate because the respondents had removed the petitioner from the board of the company thereby denying him the legitimate expectation of carrying on with the development of the land to fruition and had taken it upon themselves to manage the company.

The value of the shares is to be taken as at the day the petitioner was removed as director to be valued by a competent accountant in a proceeding before the registrar.

The fact that the value of the shares may have been diminished should not be held against the petitioner as he had no hand in the company's management since then.

Costs to the petitioner.